

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM DUNNE, et al.,	)	Case No. 2:18-cv-09728-MWF-JC
Petitioner,	)	
v.	)	ORDER ACCEPTING FINDINGS,
THAHESHA JUSINO,	)	CONCLUSIONS, AND
Respondent.	)	RECOMMENDATIONS OF UNITED
	)	STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the “Petition for Relief in the Nature of Mandamus” (“Petition”), the parties’ submissions in connection with respondent’s Motion to Dismiss the Petition and Motion for Summary Judgment, and all of the records herein, including the Report and Recommendation of United States Magistrate Judge filed on March 31, 2021 (“Report and Recommendation”) (Docket No. 77), and petitioner Dunne’s objections thereto filed on May 4, 2021 (“Objections”) (Docket No. 82).<sup>1</sup>

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<sup>1</sup>Petitioner Farrugia did not file any objections to the Report and Recommendation. Farrugia was released from prison on December 2, 2020, and did not file a change of address with the Court. See Report and Recommendation at 3 & n.2 (discussing Farrugia’s failure to address motions that were pending before the Court and subsequent release).

1 The Court has made a *de novo* determination of those portions of the Report  
2 and Recommendation to which objection is made. The Court concurs with and  
3 accepts the findings, conclusions, and recommendations of the United States  
4 Magistrate Judge, and overrules the Objections. The Court has considered and  
5 overruled all of Dunne's Objections and addresses certain portions thereof below.

6 Dunne's Objections take issue with the Magistrate Judge's detailed summary  
7 of petitioners' grievances and their requests for relief. See Objections at 1-14. As  
8 for a basis for jurisdiction, Dunne again asserts that the Court has mandamus  
9 jurisdiction to consider petitioners' issues with the alleged failure to follow  
10 grievance procedures at FCI Victorville. Id. at 15-22. Petitioner argues that the  
11 Warden's duties are non-discretionary, ministerial and so plainly prescribed to be  
12 free from doubt to give rise to mandamus jurisdiction because the governing  
13 regulations provide that the Warden "shall" acknowledge and respond to requests.  
14 See Objections at 15-16 (citing, *e.g.*, 28 C.F.R. §§ 542.11, 542.18). As the  
15 Magistrate Judge explained, however, these regulations when read together do not  
16 suggest that prisoners have an absolute right to a response, see Report and  
17 Recommendation at 6 & n.5, 19 (discussing same), and the regulations clearly  
18 reserve to the Warden/Regional Director/General Counsel discretion to establish  
19 the procedures for receiving, recording, reviewing, investigating and responding to  
20 administrative remedy requests. See 28 C.F.R. § 542.11(a)(1). Against this  
21 backdrop, petitioners have not met their burden in showing non-discretionary acts  
22 to which they have a clear and indisputable right. Additionally, petitioners have  
23 not shown they have no other adequate remedy available. See Report and  
24 Recommendation at 21-22.

25 Accordingly, IT IS HEREBY ORDERED that (1) the Motion to Dismiss is  
26 granted and the "Petition for Relief in the Nature of Mandamus" and this action are  
27 dismissed without prejudice; (2) the Motion for Summary Judgment is denied

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1 as moot; and (3) the Clerk shall enter Judgment accordingly and shall serve copies  
2 of this Order and the Judgment herein on petitioners and counsel for respondent.

3 IT IS SO ORDERED.

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5 DATED: September 10, 2021

A handwritten signature in black ink, appearing to read "Michael W. Fitzgerald". The signature is written in a cursive, flowing style.

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8 MICHAEL W. FITZGERALD  
9 UNITED STATES DISTRICT JUDGE  
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